U.S. Court Holds Marcos and Wife In Contempt for Defying Subpoena

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Former President Ferdinand E. Marcos of the Philippines and his wife, Imelda, have been held in contempt of court for failing to obey a grand jury's subpoenas in Manhattan, a Federal appeals court said yesterday in upholding the contempt citations.

The appeals court said the subpoenas required the Marcoses to provide their fingerprints, financial records and other material for the grand jury's investigation. It said the grand jury was looking into accusations that the Marcoses had embezzled "enormous sums" before Mr. Marcos left office and went into exile in 1986.

In a decision issued in Manhattan, the appeals court affirmed a Federal district judge's decision in August holding the Marcoses in civil contempt of court and issuing a warrant for their arrest. It rejected a defense claim that the Marcoses retained "head-of-state immunity." Marcoses Living in Hawaii

The United States Attorney in Manhattan, Rudolph W. Giuliani, said he had no immediate comment on whether efforts would be made to arrest the Marcoses in Hawaii, where they have been living.

A lawyer for the Marcoses, John J. Tigue Jr., said last night that he had just received the court decision, which was issued late in the day. "We are studying it and considering whether to pursue an appeal to the Supreme Court," he said.

Unless the decision is overturned, Mr. and Mrs. Marcos could be arrested in Hawaii and either held in jail there or brought to a Federal jail in New York. They could be held throughout the life of the grand jury, normally 18 months, to coerce them to comply with the subpoenas.

The State Department had no immediate reaction to the decision of the appeals court in New York.

The appeals court noted that the grand jury had not filed an indictment.

The Reagan Administration is reportedly near a decision whether to approve an indictment of Mr. Marcos in New York. The indictment is said to focus on charges that he used fraudulent means to buy Manhattan real estate and valuable art works after leaving the Philippines. Senior Administration officials said last week that the Justice Department wanted to go ahead with an indictment as soon as possible but that State Department officials wanted to give Mr. Marcos a chance to plead guilty to avoid trial and gain a lighter sentence.

The President also has the option of voiding a Federal indictment, and an Administration official described him as "very troubled" about prosecuting Mr. Marcos after persuading him to leave power and accept exile in the United States.

Although the Marcos investigation has been previously reported, the court decision yesterday provided the first public information about the contempt of court involving the secret grand-jury proceedings.

The decision, by the United States Court of Appeals for the Second Circuit, said Judge John M. Walker Jr. had issued the contempt ruling against Mr. and Mrs. Marcos on Aug. 11 in Federal District Court in Manhattan. It said defense lawyers obtained a stay of the contempt order and arrest warrant pending the outcome of their appeal. Contempt Order Affirmed

"We now vacate the stay and affirm the order holding the Marcoses in civil contempt," said yesterday's decision, which was written by Judge Richard J. Cardamone with the concurrence of Judge George C. Pratt and Judge Charles H. Tenney.

The appeals court said the Federal Government believed that the Marcoses and others acting with them "fraudulently diverted enormous sums of money that belonged to the Philippine Government and the Government of the United States, which money was intended for the benefit of the Philippine people."

"Among the alleged means employed," it said, "were embezzlement of funds in both countries, a portion of which were then used to purchase personal and real property in the United States, and the remainder of which were transferred to secret Swiss bank accounts for the Marcoses's benefit."

The Federal grand jury in Manhattan began its investigation in June 1986 into "allegations that the Marcoses had violated the Racketeer Influenced and Corrupt Organizations Act," the court said. In April, the court continued, the grand jury began issuing four subpoenas that called on the Marcoses to provide voice and handwriting examples, fingerprints and financial records from foreign banks.

The Marcoses refused to obey the subpoenas, the court said, and their lawyers contended that "they retain head-of-state immunity" and other legal protections. The court explained that "the general rule of the head-of-state immunity doctrine is that such a person is immune from the jurisdiction of foreign courts."

"The Marcoses argue that they retain head-of-state immunity," the court said, "despite their exodus from office and the current Philippine Government's purported waiver of their immunity."

Rejecting the defense arguments, the court cited a diplomatic note dated Aug. 9 from the current Philippine Government waiving "any residual sovereign, head of state or diplomatic immunity" that the Macoses might have under international law.

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